IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 202 of 1993
With
SPECIAL CIVIL APPLICATION No. 203 of 1993
With
CIVIL APPLICATION No. 2033 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PUNJABHAI KALABHAI - Petitioner(s)
Versus
THE SPECIAL SECRETARY,REVENUE DEPT.AND OTHERS & 4 - Respondent(s)

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Appearance :

MR HARIN P RAVAL for Petitioner(s) : 1,
MR ND GOHIL AGP for Respondent(s) : 1 - 4.
MR JAGDISH MEHTA FOR MR YOGESH S LAKHANI for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/11/2006

ORAL JUDGMENT

1. This order shall dispose of Special Civil Application No.202 of 1993 filed by Punjabhai Kalabhai and Special Civil Application No.203 of 1993 filed by Hamirbhai Naranbhai Rathod.

2. Shri Harin P.Raval, learned counsel for the petitioner in each of the cases, Shri N.D. Gohil, learned Assistant Government Pleader for the respondent Nos.1 to 4 and Shri Jagdish Mehta under the authority of Mr.Yogesh S.Lakhani, learned counsel appears for the respondent No.5.

3. As the facts of the two cases are interwoven, I will record joint facts of both the cases.

4. Somewhere in the year 1982, Hamirbhai Naranbhai Rathod, petitioner of Special Civil Application No.203 of

1993 made an application to the Assistant Collector for grant of 6 Acres of land out of Part of Survey No.69 on lease for a period of 30 years enabling him to grow fruit bearing trees. The said application was allowed by the Assistant Collector on 26/1/1983, the petitioner was later-on given possession of the property and after obtaining the property, he developed fruit bearing trees.

5. Punjabhai Kalabhai – petitioner of Special Civil Application No.202 of 1993 also made an application for allotment of 6 Acres of land out of Survey No.69 for growing fruit bearing trees. The said application came to be rejected by the Assistant Collector, Veraval on 2/5/1985. The said Punjabhai Kalabhai, being aggrieved by the said order of rejection, filed an appeal before the District Collector, who by his order dtd.12/11/1986 allowed the appeal filed by Punjabhai Kalabhai and directed grant of 6 Acres of land out of Survey No.69. Punjabhai Kalabhai was later-on issued a notice from the side of the Government on 3/2/1988 to show cause as to why the order dtd.12/11/1986 be not quashed and set aside.

6. Before anything could be done in the matter, each of the

petitioners filed Regular Civil Suit No.352 of 988 against the Range Forest Officer, Veraval, District Conservator of Forest, Junagadh and State of Gujarat, seeking a declaration that the defendants had no right, title or interest in the land admeasuring 6 (Six) Acres allotted in favour of petitioner of each of the petitions and an injunction that each of the defendants be restrained from interfering with the possession of the plaintiffs. The respondent No.5 filed an application for being impleaded as party defendant, the said application was allowed by the Civil Court and the present respondent No.5 became defendant No.4 in the said suit.

7. In the said suit, the trial court [Civil Judge (J.D.)] directed the parties to maintain status-quo and after transfer of the case to the court of learned Civil Judge (S.D.), the order of status-quo in the renumbered Regular Civil Suit No.426 of 1989 continued. On 27/10/1988, notice issued to Punjabhai Kalabhai was ultimately dropped.

8. The present respondent No.5 – Ramanlal Prabhudas filed Revision Application No.7 of 1989, impleading each of the petitioners as party respondents and challenged order

dtd.26/1/1983 passed by the Assistant Collector in favour of Hamirbhai Naranbhai Rathod and order passed by the Collector himself on 12/11/1986 in favour of Punjabhai Kalabhai.

9. The petitioners appeared before the Collector and submitted that the revision was not maintainable, the petition was misconceived and as the present respondent No.5 had no locus-standi to challenge to the orders of allotment made either by the Assistant Collector or by the Collector in appeal, the revision be dismissed.

10. By order dtd.6/2/1990, the District Collector, Junagadh, rejected Revision Application holding that the present respondent No.5 had no locus-standi to challenge the orders and on the merits, he held that the revision application was not maintainable.

11. The dissatisfied respondent No.5 took up the matter under sec.211 of the Bombay Land Revenue Code before the Special Secretary, Revenue Department (Appeals). The said revision application was registered as Revision Application No.15 of 1990.

12. After hearing the parties, the learned Revisional Authority allowed the revision which set the ball in motion again and persuaded the present petitioners to file these writ petitions.

13. Shri Harin P.Raval, learned counsel for each of the petitioners submits that in case of Punjabhai Kalabhai – petitioner of Special Civil Application No.202 of 1993, revision application was not maintainable, because the order of allotment was made by the Collector himself and any person if was aggrieved by the said order made by the Collector in favour of Punjabhai Kalabhai, then he was required to challenge the said order before the higher authority or in some competent forum. For other part of the revision, it was submitted that the order of the Assistant Collector made in favour of Hamirbhai Naranbhai Rathod, also could not be challenged before the Collector in a revision almost after a lapse of six years, that too in the facts of the case that the respondent No.5 who claims to have been in possession of the land in dispute was dispossessed in the year 1983, the possession was handed over to the petitioner and

since thereafter, the petitioner continues in possession. His further submission is that the Collector was absolutely justified in rejecting the petition on the ground of locus so also on the ground of maintainability. Though number of other arguments have also been raised, but I do not think that I should record those arguments.

14.Shri Jagdish Mehta, learned counsel for the respondent No.5 submits that the order passed by the Special Secretary (Appeals) is in accordance with law and once he found that the order of allotment could not be made, then he was entitled to exercise the power in a case like present. He also submits that the facts were brought to the notice of the Collector and under such circumstances, the ball was rolled in motion and ultimately, was brought before the Special Secretary. According to him when illegality is brought to the notice of the authority, then the authority is duty bound to look into the correctness, validity and propriety so also the legality of the action and it cannot simply say that it would not exercise its powers because the complainant does not have locus-standi. He also submits that the forest personnel appeared before the Collector and submitted that the

land was declared as forest land and as such it could not be allowed in favour of the petitioners.

15.Shri N.D. Gohil, learned Assistant Government Pleader for the State submits that as the land has been declared to be forest land, the same could not be allotted. On being asked that since after the allotment in the year 1983 by the Assistant Collector or in the year 1986 under the order of the Collector, has the forest department initiated any proceedings to challenge the orders of allotment, Mr.Gohil, learned Assistant Government Pleader for State very fairly submitted that no such proceedings have been drawn by the forest department. On being asked that whether the State authority have ever challenged the orders of allotment made by the Assistant Collector or the Collector before any competent authority or in any court of law, to that also his fair concession was that it was not so done.

16.Undisputedly in case of Punjabhai Kalabhai, petitioner of Special Civil Application No.202 of 1993, the application submitted by said Punjabhai Kalabhai was rejected on 2/5/1985 and appeal against the said order was allowed

by the District Collector, Junagadh on 12/11/1986. It is trite law that if an order is passed by the competent authority in its appellate jurisdiction and any person is aggrieved by the said order, then he has some courses open to him which are, (i) he may file an appeal against the said order (ii) he may file a revision or (iii) he may file petition for review of the order.

17. So far as the first two courses are concerned, the remedy would be available before the higher forum and not before the same forum. One cannot challenge an order passed by the authority before the very same authority either in appeal or in revision. An appeal presupposes that in the hierarchy of the system, an appeal is to be preferred to some higher authority. So far as the third course is concerned, a review application may lie to an authority on the ground as available under the Act and not otherwise.

18. In the present case, against the order of the Collector, a revision petition was filed before the very same Collector. The process is unknown to law, such an action cannot be approved. It is unheard. No review petition was filed, nor

it was contended before the Collector that the revision be taken to be a review. If such a submission was made before the Collector and the revision petition was taken to be review petition, then the order passed by the Assistant Collector in favour of Hamirbhai Naranbhai Rathod, petitioner of Special Civil Application No.203 of 1993, could not have been considered by the Collector, because the Collector did not pass any order in favour of said Hamirbhai Naranbhai Rathod.

19. The Collector was absolutely justified in holding that the revision, at the instance of the present respondent No.5 so far as that challenged the order passed by the Collector himself, was not maintainable.

20. In relation to the allotment made in favour of Hamirbhai Naranbhai Rathod, petitioner of Special Civil Application No.203 of 1993, the facts floating on the surface of the records would show that the allotment was made in the year 1983. The respondent No.5 who claimed to be in possession under some earlier allotment, was dispossessed in the year 1983 and the possession was given to the petitioner. From the facts, it would be clear

that the respondent No.5 in the year 1983 itself came to know that an order in favour of Hamirbhai Naranbhai Rathod has been passed and the said order adversely affected the interest of the respondent No.5. Despite all that, the respondent No.5 did not challenge the order of the Assistant Collector either in appeal before the Collector or in revision before any higher forum. He was happy and content. He had surrendered to the fate. He came out of his slumber only after the second order was made by the Collector in his appellate jurisdiction. A revision, ordinarily, at the instance of a party would not lie after the period of limitation had expired. In the present case, the respondent No.5 filed revision petition almost after six years of the first order and that too without explaining the delay. A revisional authority would not be entitled to exercise its revisional power on an application of a party which does not explain the delay and does not ask the revisional authority to condone the delay. The present is not a case wherein suo-motu powers could be exercised by the Collector. In the present case, once the matter was dismissed by the Collector, the revisional authority i.e. the Special Secretary, Revenue Department (Appeals), could not

interfere in the matter unless holding that the revision before the Collector was maintainable. The maintainability of the revision before the Collector could only provide a foundation to the revisional authority [Secretary (Appeals)] to look into the correctness of the order and make it interference.

21. In the present case, the authority simply took the matter to be a revision at the instance of a party affected and did not look into the maintainability of the revision before the collector.

22. The Revenue Secretary, in the opinion of this Court, was absolutely unjustified in making interference in the matter, that too, without appreciating that the revision challenging the order which was made in favour of Punjabhai Kalabhai, petitioner of Special Civil Application No.202 of 1993, before the very same Collector, was not maintainable and the revision challenging the allotment made in favour of Hamirbhai Naranbhai Rathod, petitioner of Special Civil Application No.203 of 1993, was filed almost after a period of six years and the delay was not explained.

23.In my opinion, the order passed by the Special Secretary, Revenue Department (Appeals) dtd.30/12/1991 (Annexure-C) in each of the petitions cannot be allowed to stand. Both the petitions are allowed. Each of the impugned orders are quashed and set aside.

24.In view of the final disposal of the main petition, Civil Application No.2033 of 1994 cannot be allowed. It deserves to and is accordingly rejected.

(R.S. GARG, J.)

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